



TATY

DEPARTMENT OF ENERGY
National Nuclear Security Administration
Los Alamos Site Office
Los Alamos, New Mexico 87544



MAY 25 2006

Laurie King
Chief, Federal Facilities Section
U.S. Environmental Protection Agency, Region 6
1445 Ross Ave., Suite 1200
Dallas, TX 75202-2733



Dear Ms. King:

In your letter dated February 7, 2006, to John Ordaz, U. S. Department of Energy (DOE), National Nuclear Security Administration (NNSA), Los Alamos Site Office (LASO), you express a concern that the DOE may be transferring parcels of land without complying with all applicable requirements. Specifically, you state a concern that DOE is transferring tracts without demonstrating to the Environmental Protection Agency (EPA) that remedial actions have been demonstrated to be operating properly and successfully (an OPS demonstration). You request that DOE submit to EPA "the necessary OPS demonstration for parcels A-18, A-18-b, and A-5-1, or in the alternative, documentation showing that the tracts fall into one of the exceptions for the OPS demonstration requirement."

No OPS demonstration is required for any of these parcels. An OPS demonstration is required in situations where a remedial action, as that term is defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), has been completely constructed and installed, but before the cleanup objectives have been met. There are no such remedial actions on these properties. The properties have been determined to have no contamination that requires remediation before transfer. DOE includes in transfer documents the required covenant warranting that all remedial action necessary to protect human health and the environment with respect to any [hazardous] substance remaining on the property has been taken before the date of such transfer.

With regard to your request that DOE submit "documentation showing that the tracts fall into one of the exceptions for the OPS demonstration requirement," the DOE does not understand this request. As stated in *EPA's Guidance for Evaluation of Federal Agency Demonstrations that Remedial Actions are Operating Properly and Successfully Under CERCLA Section 120(h)(3)*, a demonstration that a remedy is operating properly and successfully is only applicable where the federal agency is implementing an ongoing remedial action (or removal action or RCRA corrective action, and desires to transfer the property before the remedial objectives have been met. We do not find in CERCLA, its implementing regulations, or EPA guidance documents, any requirement to demonstrate that there is no ongoing remedial action on a parcel of land intended for transfer. If you are aware of any such requirement, please provide us with that information.

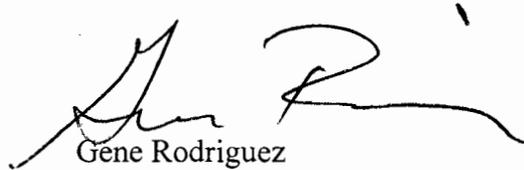


It is accurate that DOE, as a matter of comity, did initially provide to EPA, for informational purposes only, information that DOE provided to the New Mexico Environment Department. However, since there is not a regulatory requirement to provide information to EPA, DOE determined that it was no longer appropriate. We agree that DOE and EPA have had a good working relationship, and we wish that to continue.

Finally, you requested a copy of "land transfer documents" for tracts A-15-1 and A-8. Tract A-8 has not yet been transferred. A copy of the deed for tract A-15-1 is enclosed. Once Tract A-8 is transferred we will forward a copy of the deed to EPA.

If you have any questions, please contact Vicki Loucks of my staff at (505) 667-6819 or electronically at vloucks@doeal.gov, or Lisa Cummings, LASO Office of Counsel, (505) 665-9172.

Sincerely,



Gene Rodriguez
Acting Assistant Manager
Office of Environmental Stewardship

ES: 9VL-014

Enclosure

cc w/enclosure:

Jim Anderson

Los Alamos County School District
751 Trinity Drive
Los Alamos, NM 87544

James Bearzi, Chief

New Mexico Environment Department
2905 Rodeo Park Dr. E., Building 1
Santa Fe, NM 87505-6303

D. Goering

New Mexico Environment Department
2905 Rodeo Park Dr. E., Building 1
Santa Fe, NM 87505-6303

L. Cummings, ES, LASO

V. Loucks, ES, LASO

G. Rodriguez, ES, LASO

R. Snyder, PM, LASO

J. Isaacson, ENV-ECO, UC-LANL MS M887

M. J. Keys, ENV-ECO, UC-LANL, MS M887

06 JAN 17 PM 3:31

WHEN RECORDED RETURN TO:
LOS ALAMOS SCHOOL BOARD
751 TRINITY DRIVE
POST OFFICE BOX 90
LOS ALAMOS, NEW MEXICO 87544

RECORDER STAMP

**PARCEL A-15-1
QUITCLAIM DEED**

This indenture, made this 14th day of December 2005 between the **UNITED STATES OF AMERICA, ACTING BY AND THROUGH THE UNITED STATES DEPARTMENT OF ENERGY, NATIONAL NUCLEAR SECURITY ADMINISTRATION** (hereinafter called "GRANTOR"), and the **LOS ALAMOS SCHOOL BOARD** (hereinafter called "GRANTEE"); and.

WHEREAS, the GRANTOR, has the authority to convey the Property, as defined below, to the GRANTEE under the Atomic Energy Act of 1954, Section 161(g), 42 U.S.C. §2201(g);

WHEREAS, the Secretary of Energy is required to convey the Property, as described below, pursuant to Section 632 of Public Law 105-119, 42 U.S.C. §2391 note, as amended; and

WHEREAS, GRANTEE has the authority to accept such conveyance under §22-5-4, N.M. Stat. Ann. 1978.

WITNESSETH;

The GRANTOR, in accordance with 42 U.S.C. §2391 note, as amended, and for good and valuable consideration, the receipt whereof is hereby acknowledged, hereby quitclaims and conveys to the GRANTEE, its successors and assigns all right, title, and interests in the parcel of land comprising approximately 7.5473 acres of land, (hereinafter "Property") situated in the County of Los Alamos, New Mexico, as described on that certain land survey plat entitled "Land Survey Plat, Los Alamos National Laboratory, Tract A-15-1," recorded as document number 182069 at Book 127 and Page 954 of the Los Alamos County Clerk records.

TOGETHER WITH ALL rights to said Property belonging or appertaining, including:

A. all buildings, facilities, roadways, air rights, infrastructure, and improvements thereon and appurtenances thereto;

- B. all appurtenant easements and other rights appurtenant to the Property;
- C. all hereditaments and tenements therein and reversions, remainders, issues, profits, and other rights belonging or related to the Property;
- D. all rights to minerals, gas, oil, water and similar rights.

Subject to all easements, covenants, and restrictions of record and as set forth within this deed.

GRANTOR has determined that the property is suitable for transfer and that no hazardous substances exist on the Property.

GRANTOR covenants that all remedial action necessary to protect human health and the environment with respect to any known hazardous substance remaining on the Property has been taken, or is in place and operating to the satisfaction of the State and Federal regulatory agencies, before the date of transfer.

GRANTOR covenants that any additional remedial action found to be necessary after such date of transfer shall be performed by the United States.

GRANTEE covenants that the GRANTOR, its officers, agents, employees, contractors and subcontractors, in accordance with section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, shall have access to the Property in any case in which remedial action or corrective action is found to be necessary after the date of the conveyance of the Property.

The GRANTOR and the GRANTEE agree to cooperate in good faith to minimize any conflict between necessary environmental investigation and remediation activities and GRANTEE's operations. Any inspection, survey, investigation, or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by GRANTEE.

The GRANTOR agrees to indemnify and hold harmless the GRANTEE and its successors, assignees, transferees, lenders and lessees against any claim for injury to a person or property that results from the release of or threatened release of a hazardous substance or pollutant or contaminant as a result of Department of Energy activities on the Property transferred under this Deed, consistent with the provisions of 42 U.S.C. 7274q.

To the extent, if at all, Section 56-7-1 NMSA 1978 is applicable to this Quitclaim Deed, no indemnification shall extend to liability, claims, damages, losses or expenses, including attorney fees, arising out of (i) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by the indemnitee, or the agents or employees of the indemnitee; or (ii) the giving of or failure to give directions or instructions by the indemnitee, or the agents or employees of the indemnitee, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property.

The conditions, restrictions, reservations, and covenants set forth in the this Deed, unless subsequently released, are a binding servitude on the Property; shall inure to the benefit of the GRANTOR and GRANTEE, their successors and assigns and will be deemed to run with the land in perpetuity as a binding servitude with the Property, pursuant to applicable law.

IN WITNESS WHEREOF, the GRANTOR, the UNITED STATES OF AMERICA, acting by and through the DEPARTMENT OF ENERGY, NATIONAL NUCLEAR SECURITY ADMINISTRATION has caused this document to be executed.

EFFECTIVE the 14th day of December, 2005.

UNITED STATES OF AMERICA
Acting by and through the
U.S. Department of Energy, National
Nuclear Security Administration

By: 
RONALD H. HOWARD
NNSA Realty Officer

STATE OF NEW MEXICO)
BERNALLIO COUNTY)

ACKNOWLEDGEMENT

On this 14 day of December, 2005, before me, a Notary Public, personally appeared Ronald H. Howard, known to me, or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the within instrument, and that this instrument was signed by him with proper authority on behalf of the United States of America and said Department of Energy/National Nuclear Security Administration, and acknowledged this instrument to be the act and deed of said United States.



My Commission expires: 25 MAY 2009


Notary Public

ACCEPTANCE

IN TESTIMONY WHEREOF, witness the signature of the GRANTEE, hereby accepts and approves this Deed for itself, its successors and assigns, and agrees to all the conditions contained therein.

LOS ALAMOS SCHOOL BOARD

By: *Kenneth F. Johnson*
KENNETH JOHNSON, CHAIRMAN

STATE OF NEW MEXICO)
LOS ALAMOS COUNTY)

ACKNOWLEDGEMENT

The foregoing instrument was acknowledged before me the ____ day of ____ 200__, by Kenneth Johnson, Chairman of the Los Alamos School Board, on behalf of said School Board.

Mary Lee Lusk
Notary Public

My Commission expires: 7-13-07